

REMARKS

Claims 1 to 22 are pending in this application, all of which have been rejected.

The Objection to the Claims

Claims 1 - 6 and 21 are objected to for not setting out steps in the proper grammatical form. Claim 1 is amended herein to correct the informalities therein.

Claims 7-20 and 22 are objected to under 37 C.F.R. 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. In particular, the Office Action points out that Claim 7, an apparatus claim, is dependent upon Claim 1, a method claim.

Applicants respectfully traverse this objection. It is a well-settled principle that method claims can include apparatus limitations. The mere recitation of structure in method claims does not render them improper. See e.g., *Ex parte Dammers*, 155 U.S.P.Q. 284 (P.O. Bd. App. 1961). Accordingly, it is respectfully requested that this objection be reconsidered and withdrawn.

The Rejection Under 35 U.S.C. §101

Claims 7-20 and 22 are rejected under 35 U.S.C. §101. In particular, the Office Action states that Claim 7 and its dependent claims contain limitations drawn to a method and apparatus.

As stated above, it is a well settled principle that claims can include both method and apparatus limitations. Accordingly it is respectfully submitted that the rejection of Claims 7-20 and 22 under 35 U.S.C. §101 is not warranted. Reconsideration and withdrawal of the rejection

are respectfully requested.

The Rejection Under 35 U.S.C. §112

Claims 7-20 and 22 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. In particular, the Office Action again improperly bases a rejection upon the dependency of an apparatus claim (Claim 7) from a method claim (Claim 1).

As stated above, there is nothing improper or unclear about such claims. Examination of these claims upon the merits is respectfully requested.

Also, Claim 7 is rejected for including the phrase “in particular of hydraulic excavators.” This phrase has been cancelled from the claim by amendment herein. Reconsideration and withdrawal of the rejection are respectfully requested.

The Rejection Under Prior Art

Claims 1-6 and 21 are rejected under 35 U.S.C. §102(b) as being anticipated by Tordenmalm et al., U.S. Patent No. 4,896,582. This rejection is respectfully traversed (reference will be made to preferred embodiments of the present invention illustrated in the drawings of the present application).

The present invention explicitly improves over the prior art as illustrated, e.g., in Fig. 7 of the present application. This improvement is explicitly attained by registering speed of the hydraulic cylinder 10, 11 before reaching its travel limit to match motion attenuation with speed and thereby optimally commence motion attenuation or speed reduction. In other words, as

recited in independent method Claim 1, the point in time P7, P7' when throttling 4, 5, 6 commences is changed depending upon the registered motion speed of the hydraulic cylinder 10, 11.

Tordenmalm et al. is directed to a method for reducing piston speed. Referring to column 3, lines 57 to 63 and column 4, lines 4 to 8 and 66 to 68, for example, it can be seen that in the Tordenmalm et al. method, it is the positioning of the piston within the cylinder which is used to activate the speed reduction of the piston.

In contrast to this, in the presently claimed invention the speed reduction of the cylinder is initiated if the speed of the cylinder exceeds a certain predetermined value. Accordingly, claim 1 recites registering the speed of the hydraulic cylinder (10, 11) prior to its reaching a respective limit of travel and determining whether the speed exceeds the predetermined value prior to reaching one of the limits of travel of the hydraulic cylinder. Tordenmalm et al. does not disclose or suggest the control of piston speed based upon speed measurements.

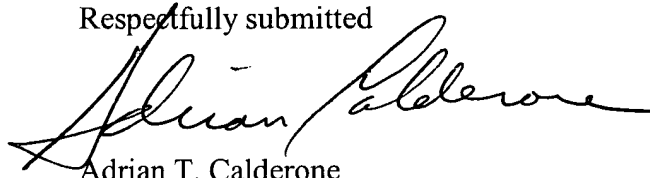
Accordingly, it is respectfully submitted that Tordenmalm et al. does not provide a basis for the rejection of the claims. Reconsideration and withdrawal of the rejection are respectfully requested.

The remaining references of record have not been applied against the claims and will not be commented upon further at this time. A petition for an automatic one month extension of time for response under 37 C.F.R. §1.136(a) is enclosed in triplicate together with the requisite petition fee.

CONCLUSION

For at least the reasons stated above all of the pending claims are submitted to be in condition for allowance, the same being respectfully requested.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Adrian T. Calderone". The signature is fluid and cursive, with the first name "Adrian" being more prominent than the last name "Calderone".

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